



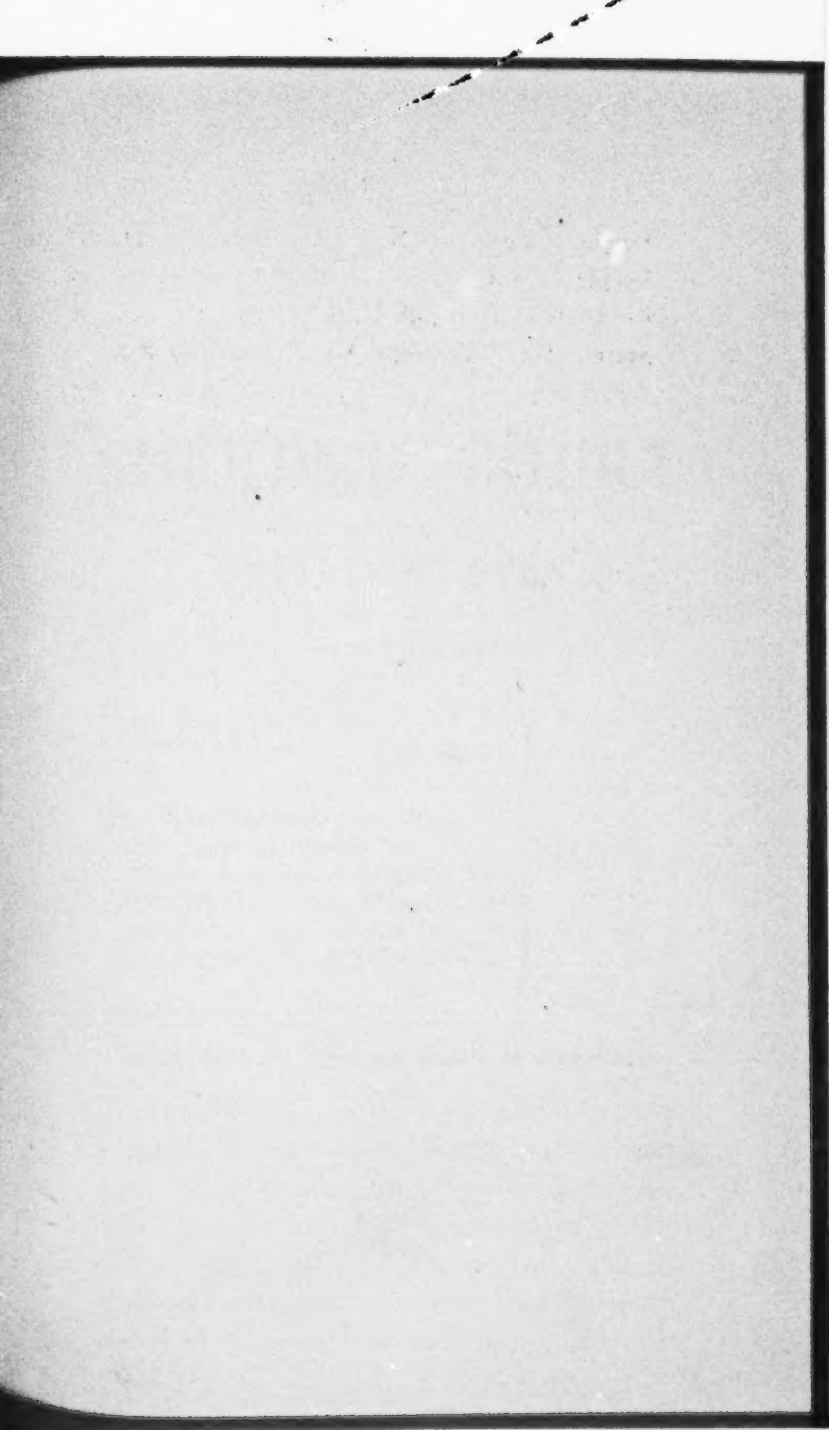
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IN THE
SUPREME COURT
OF THE
UNITED STATES.

OCTOBER TERM 1916.

P. L. Crane,

Appellant,

vs.

**Hiram W. Johnson, Governor of
the State of California, U. S.
Webb, Attorney General of the
State of California, Thomas Lee
Woolwine, District Attorney of
Los Angeles County, California,**

Appellees.

No. 493.

Supplementary Brief on Behalf of Appellees.

Since filing our main brief herein, several important cases having direct bearing upon some of the questions here involved have been decided by the courts of last resort of certain of the states, and it is our desire to present these in order that the court may have the benefit of them in their decision of this case.

And in addition we have thought it advisable to obtain a statement from an authorized Christian Science source setting forth the view of that denomination on the question of prayer and the healing of the sick. We have therefore incorporated herein such a statement prepared by Mr. Henry Van Arsdale, Christian Science committee on publication for Southern California, whose duty it is, we are informed, to defend the practice of Christian Science against attacks through legal or legislative proceedings.

Treatment of the Sick by Prayer or in the Practice of a Religion Upheld by New York's Court of Last Resort.

The Court of Appeals of New York handed down a decision on October 3rd of this year, reported in 219 N. Y. Advance Sheets 98, in which the question of "treatment of the sick by prayer or in the practice of a religion" was fully considered and we quote at length therefrom:

"It does not appear that the defendant attempted to diagnose the diseases which the investigator stated to him that she had; he not only in substance denied that she had any disease, but asserted that they rested in her imagination or were mere evidence of a lack of true relation to her God. There was no inquiry on his part into the symptoms which the investigator claimed that she had as indicating the diseases.

There was no laying on of hands, manipulation, massage, or outward ceremonial. His direction to her to remove her glasses and take off a porous plaster which she asserted she had upon her back were, as also asserted by him, simply to bring about complete reliance by her upon the power and willingness of God to heal her diseases. Such directions were not, he asserts, intended as a prescription or as advice. It was a test of her faith. He, however, testified that prayer was a synonym for treatment. He habitually termed his interposition by prayer a treatment, and such it would seem to have been in the ordinary meaning of the word. He had a place where interposition by prayer to God could be sought through him at a price, either as a compensation or as an honorarium. He asserts that he made interposition with God by prayer to take away disease or what he alleges to be wrong relationships between persons having diseases and their God. His interposition with God, as explained by him, required Divine action that the inharmony between the Divine Being and the person who sought to be relieved of diseases and infirmities might be adjusted. The duties of the defendant as a practitioner would seem to have been to handle the claim of those that came to him with their ills with a view to obtaining a Divine cure. Such interposition under such circumstances was, in the language of the defendant himself, a 'treatment.'

"We are of the opinion that the defendant did 'treat' the investigator by 'any (some) means or method,' as the word is used in the general prohibition contained in the statute.

"The general and comprehensive definition of a person who practices medicine has an express exception. The descriptive words are preceded by the phrase 'except as hereinafter stated.' The exception concededly refers to the words in section 173 of the Public Health Law as follows: 'This article shall not be construed to affect * * * the practice of the religious tenets of any church.' *The exception includes every person in the practice of the religious tenets of any church and it is not in any way in conflict with the federal or state constitution.* The language quoted from said section 173 is not in any sense an affirmative license. It is, we repeat, an exception to the general prohibition. Whether the practice of the religious tenets of any church should have been excepted from the general prohibition against the practice of medicine unless the practitioner is registered and authorized so to do, or whether the exception should be continued therein, is a question for the legislature and not for the courts. The purpose of the general statute is to protect citizens and others of the state from being treated in their physical ailments and diseases by persons who have not adequate or proper training, education or qualifications to treat them.

"The tenets of a church are the beliefs, doctrines and creeds of the church. The exception relates to the tenets of the church as an organized body as distinguished from an individual. It does not relate to or except persons practicing in accordance with individual belief.

"It appears from the record that it is a tenet of the Christian Science church that

prayer to God will result in complete cure of particular diseases in a prescribed individual case. Healing would seem to be not only the prominent work of the church and its members, but the one distinctive belief around which the church organization is founded and sustained.

"It is claimed that the church extends its influence and spreads knowledge of its power by practical demonstration on the part of its sincere practitioners in securing the overthrow of moral, mental and physical disease. It disclaims any reliance upon skill, education or science. In view of the tenets of the Christian Science church the exception to the prohibition in the statute is stronger than the provision of the constitution of this state which we have quoted and which permits the free exercise and enjoyment of religious profession and worship without discrimination or preference.

"The exception in the statute is not confined to worship or belief but includes the practice of religious tenets. *If it was the intention of the Legislature to relieve members of the Christian Science and other churches from the provisions of sections 160 and 161 of the Public Health Law to the extent of permitting them within the rules, regulations and tenets of a church to maintain an office and there offer prayer for the healing of the diseases of those that might come to such church members for treatment, and the defendant has in good faith acted in accordance therewith, he is not guilty of the crime alleged in the indictment.*

"The Christian Science church is in terms expressly excepted from the prohibition contained in the medical practice acts

of many of the states. It is so expressly excepted in the statutes of Maine, New Hampshire, Massachusetts, Connecticut, North Carolina, North and South Dakota, Kentucky, Tennessee and Wisconsin.

"We think the exception in the statute in this state is broad enough to permit offering prayer for the healing of disease in accordance with the recognized tenets of the Christian Science church. It may be said that if the exception is so construed, it will lead to numberless persons assuming to cure diseases in the name of a church for the purpose of thereby maintaining a business and securing a livelihood. The religious tenets of a church must be practiced in good faith to come within the exception. When such practice is a fraud or pretense it is not excepted from the general prohibition. When wrong is practiced in the name of religion it is not protected by constitution or statute. (Reynolds v. U. S., 98 U. S. 145; Davis v. Beason, 133 U. S. 333; Mormon Church v. U. S., 136 U. S. 1.) Many of the decisions referred to by counsel may be explained by the fact that the persons therein severally considered were frauds and shams. (See People v. Spinella, 150 App. Div. 923; affd., 206 N. Y. 709.)

"A person should not be allowed to assume to practice the tenets of the Christian Science or any church as a shield to cover a business undertaking. When a person claims to be practicing the religious tenets of any church, particularly where compensation is taken therefor and the practice is apart from a church edifice or the sanctity of the home of the applicant, the question whether such person is within the exception

should be left to a jury as a question of fact. In this case the court charged the jury: 'If you find from the evidence in this case that this defendant did engage in the practice of medicine as alleged in the indictment, within the definition which I have given to you, it is no defense that he did what he did from any sense of duty, or that he did these acts in the practice of the religious tenets of the Christian Science church.' We are of the opinion that the court was in error in so charging the jury. *The exception was intended by the legislature to exclude from the prohibition the practice of the religious tenets of the Christian Science and other churches.* It was necessary, as we have seen, that the practice be of the tenets of a recognized church and the court instead of charging the jury as stated, should have left to the jury the question whether the defendant was in good faith practicing the tenets of such a church within the meaning of the statutory exception.

"The judgment should be reversed and a new trial ordered.

"Cuddeback and Cardoza, JJ., concur: Willard Bartlett, Ch. J., concurs in the following memorandum:

"*I concur in Judge Chase's construction of the statute. But I would go farther. I deny the power of the legislature to make it a crime to treat disease by prayer.*"

"Collin, J., not voting; Hogan, J., absent; Seabury, J., not sitting.

"Judgment reversed, etc."

Prayer Not Suggestion.

By Henry Van Arsdale, Christian Science Committee on Publication for Southern California.

The motive or instinct of prayer, the desire to avail one's self of the power of a supreme being, is probably as old as humanity. It is common to all and far antedates the patriarchs, the prophets, and the time of Jesus the Christ of our Bible. The reliability of prayer and its dependability, however, were not provable so long as polytheism prevailed, and power was ascribed to more than one deity. The unsatisfied desire for deific aid, addressed to gods that were no gods, led reflective men into a higher and yet higher consciousness and it gradually became apparent to human thought that power and causation were centered in one Being. The patriarch Abraham, the "friend of God," (James 2:23), was the greatest of these reflective minds. Abraham saw clearly that he must get away from the environments of polytheism if he was to grow in the understanding of the fact that there is but one God, and so he started on that journey described in the 12th chapter of Genesis. As the truths of monotheism grew in his consciousness prosperity followed in all that he did. Two incidents in this journey, which may be described as a passing from the belief in many gods into the understanding of one God, stand

out. First, the meeting with Melchizedek, from whom Abraham gained the thought of a "most high God, possessor of heaven and earth" (Gen. 14:19); he now knew definitely that there was one God, higher and more powerful than all other gods. Second, the full realization of this some years later, in his one-hundredth year, when this one God became fixed in his thought as, "I am the Almighty God; walk before me, and be thou perfect." (Gen. 17:1.) This final stage of growth as to the understanding of the nature of God was marked in the change of his own nature and name from Abram to Abraham. Enoch and Noah, the one fourteen hundred and the other six hundred years before this, had obtained some view of this omnipotent One; for it was said of each that he "walked with God," (Gen. 5:22 and 6:9). That is, they were in fellowship with God, Elohim. These patriarchs all proved the availability of the power of God on the human plane. Abraham was "justified by works," (James 2:21); Enoch did "not see death," (Heb. 11:5); Noah obtained a great promise for the human race. The Bible is the one book which contains the record of those historic characters whose spiritual perception enabled them to see clearly that there is but one Supreme Being, infinite, omnipotent and omnipresent. All Christian nations and churches assent to this. "Hear, O

Israel: The Lord our God is one Lord," is the Shema of the Hebrew. The Roman Catholic and the Protestant aver "I believe in God the Father Almighty, Creator of Heaven and Earth." (Creed.)

Prayer is communion with God; a coming into unity with God. It is desire which must first be thought before being uttered and is just as much available to the child, and the illiterate, as to the adult, and the scholar. The Hebrew verb translated "pray" in the majority of the Old Testament passages literally means "to judge one's self habitually;" in other words, a constant, silent self-examination that leads away from what Paul called the carnal mind, the "natural man" who is unable to receive or to know the things of the spirit of God, and leads to that condition of consciousness which Paul pressed upon the Philippians when he wrote them to "Let this mind be in you, which was also in Christ Jesus." Such a consciousness gets to know that the will of God is always done and that God's Kingdom is already come. From such a consciousness evil is disappearing and good is appearing. The right mental processes of this consciousness separate the real from the false, correct conclusions are drawn, and the mind is made fit to receive the good already conferred by a God who is Love, and

enabled to utilize this love to bring about harmony where before there was discord.

From the race of the patriarchs and the prophets came Jesus with a full and complete understanding and realization of the infinite One and His laws. Prayer is putting into practice the understanding of God which Jesus possessed and gave to the world so clearly that all may know the nature and character of God; His goodness, His love and His power. In brief it is summed up in John 15:7:

“If ye abide in me, and my words abide in you, ye shall ask what ye will, and it shall be done unto you.”

Another member of Jesus' household, James, his half-brother, wrote this to “the twelve tribes which are scattered abroad:”

“The prayer of faith shall save the sick, and the Lord shall raise him up * * * the effectual fervent prayer of a righteous man availeth much.”

The Christian Science concept of prayer is best presented by quoting from Jesus' words as appears in Mark 11:24.

“Therefore I say unto you, what things soever ye desire, when ye pray, believe that ye receive them, and ye shall have them.”

Both the Old and New Testaments are replete with exhortations to prayer. The Westminster Confession says:

"Prayer is by God required of all men. Prayer is to be made for things lawful, and for all sorts of men living."

In the introduction to the Roman Catholic "Sunday Missal," written by Rev. F. X. Lasance, occurs this:

"In thoroughly Catholic lands at the present day, as in England before the Reformation, every undertaking, every anxious aspiration is commended to Almighty God and His saints by the hearing of Mass."

The orthodox Hebrew regards prayer as a natural and necessary expression of his religious convictions and life.

Mrs. Eddy, the Discoverer and Founder of Christian Science, in her Message of 1901, page 19, says:

"Prayer brings the seeker into closer proximity with divine Love, and thus he finds what he seeks, the power of God to heal and to save."

In the International Encyclopedia, second edition, in the article on prayer, is this statement:

"It rests upon the appreciation of the loving care of the all-wise and all-powerful Father."

In The New Schaff-Herzog Encyclopedia of Religious Knowledge, published by Funk and Wagnalls, New York and London, 1911, Vol. IX, pp. 154 and 155, prayer is referred to as

that which brings to man the fulfillment of the Divine word and so makes God manifest to humanity; it is the medium through which man addresses the Father and so becomes conscious of the immanence of the Divine power and order. Quoting literally from the article:

"Healing in the apostolic church was inseparable from prayer. * * * There is no present need of arguing for the healing value of prayer. * * * Its therapeutic power cannot be doubted. * * * Prayer, as an address to God, implies that God is near to man, it involves certainty of the reality of God."

In the Christian Science textbook, "Science and Health with Key to the Scriptures," by Mary Baker Eddy, occur the following statements which are selected from many dealing with the efficacy of prayer:

"Consistent prayer is the desire to do right. Prayer means that we desire to walk and will walk in the light so far as we receive it, even though with bleeding footsteps, and that waiting patiently on the Lord, we will leave our real desires to be rewarded by Him.

"The world must grow to the spiritual understanding of prayer."

Line 32, page 9, to line 6, page 10.

"A great sacrifice of material things must precede this advanced spiritual understanding. *The highest prayer is not one of faith merely; it is demonstration.* Such prayer heals sickness, and must destroy sin

and death. It distinguishes between Truth that is sinless and the falsity of sinful sense”

Lines 1 to 6, inc., page 16.

“Only as we rise above all material sensuousness and sin, can we reach the heaven-born aspiration and spiritual consciousness, which is indicated in the Lord’s Prayer and which instantaneously heals the sick.”

Lines 20 to 23, inc., page 16.

The Christian Science view is further expressed by Mrs. Eddy in her book No and Yes, on page 39:

“Prophet and apostle have glorified God in secret prayer, and He has rewarded them openly. Prayer can neither change God, nor bring His designs into mortal modes; but it can and does change our modes and our false sense of Life, Love, and Truth, uplifting us to Him. Such prayer humiliates, purifies, and quickens activity, in the direction that is unerring.

“True prayer is not asking God for love; it is learning to love, and to include all mankind in one affection. Prayer is the utilization of the love wherewith He loves us. Prayer begets an awakened desire to be and do good. It makes new and scientific discoveries of God, of His goodness and power. It shows us more clearly than we saw before, what we already have and are; and most of all, it shows us what God is.”

Consciousness thus imbued with a knowledge of the spiritual law acts with certainty, and as

the power and perfection of Divine Love is realized, this realization must be and is manifested in human experiences. The healing work thus accomplished is in no sense akin to suggestion; to faith healing as commonly understood; to efforts to manipulate and adapt the thought of the sick person to the stronger thought of another; to what has come to be known as drugless healing; to hypnosis; to mesmerism; or to any form of psycho-therapy. The divine Mind, acting through man and reflected by man, results in a purification of thought and purpose, all sense of evil is expelled from consciousness and man sees himself as God's own image, apprehends the fact of his spiritual being as a son of God, and so is liberated. In other words, as a result of the use of right prayer, the prayer of understanding, man is enabled to know the truth, which Christ Jesus said he should know, and the truth thus known frees him as Jesus said it would. The mental process is not one of suggestion, it is scientific Christianity, exact, demonstrable knowledge of God and His laws: laws which are unerring, constant, ever-available and universal in their application. In short, the mental process of prayer is one of true religious activity, the results of which are certain. The Apostle John stated it as follows:

"Whatsoever we ask, we receive of Him, because we keep His commandments, and do those things that are pleasing in His sight." (I John 3:22.)

Below are numerous quotations from various sources showing the universality of and belief in the efficacy of prayers for the sick:

The "Union Prayer Book for Jewish Worship," edited and published by the Central Conference of American Rabbis, in part 2, at page 50, provides:

"Thou art omnipotent, O Lord, and mighty to save. In Thy kindness Thou sustaineth the living, upholdeth the fallen, healeth the sick, and setteth the captive free"

In the same volume, at page 206, the following appears:

"Give health to my sick heart and heal my wounds."

In a volume entitled "Judaism," by Israel Abrahams, M. A., at page 40, the following appears:

"The liturgy of the Synagogue has been well termed a precipitate of all Jewish teaching as to God. He is the Great, the Mighty, the Awful, the Most High, the King. But He is also the Father, Helper, Deliverer, the Peace-Maker, Supporter of the weak, Healer of the sick."

Memoranda of Prayers, referring to the sick, from The Sunday Missal, compiled by Rev.

F. X. Lasance, published by Benziger Brothers, New York, Cincinnati, Chicago, "Printers to the Holy Apostolic See," 1916:

Page 85, under the title, Commemoration of the Living:

"Be mindful, O Lord, of Thy servants,
and of * * * the health and welfare
they hope for. * * *"

Page 91, under the title, Commemoration of the Dead:

"Deliver us, we beseech Thee, O Lord,
from all evils, past, present, and to come
* * * that through the help of Thy
bountiful mercy we may always be free
from sin and secure from all disturbance."

Page 478, under the title, Mass for the Sick;
sub-title, A Mass that has come down to us
from primitive times:

"O Almighty and everlasting God, the
eternal salvation of them that believe, hear
our prayers for Thy sick servants for whom
we implore Thy mercy, that with restored
health they may render Thee thanks in
Thy Church. Through Our Lord."

Page 530, under the title, Evening Prayers;
sub-title, Pray for the Living and for the Faith-
ful Departed:

"Pour down Thy blessings, O Lord, upon
all my relations, friends, and benefactors;
and upon my enemies, if I have any. Help
the poor and sick, and those who are in
their last agony. O God of mercy and

goodness, have compassion on the souls of the faithful in purgatory; put an end to their sufferings, and grant to them eternal light, rest, and happiness. Amen."

From the Confession of Faith, known as the Westminster Confession:

"Prayer is an offering up of our desires unto God. We are to pray for ourselves, our brethren and for all sorts of men living. We are to pray for our own or others' good. We are to pray with a lawful apprehension of the majesty of God; with understanding."

Of the Visitation of the Sick:

"When persons are sick it is their duty to send for their minister and make known to him with prudence their spiritual state, and it is his duty to visit them at their request and to apply himself with all tenderness and love; to administer spiritual good to their immortal souls. It will be proper to administer consolation and encouragement to him (the sick person), by setting before him the freeness and richness of the grace of God; the all sufficiency of the righteousness of Christ; and the supporting promises of the Bible. The minister must endeavor to guard the sick person against unreasonable fears of death and desponding discouragements. In one word it is the minister's duty to administer to the sick person instruction, conviction, support, consolation, encouragement, as his case may seem to require. At the proper time, when he is most composed, a minister shall pray with and for him."

From the decision rendered by the New York Court of Appeals on October 3rd, this year, in the case of *People v. Cole*, which sustained the legality of Christian Science practice, the following is quoted:

"It appears from the record that it is a tenet of the Christian Science church that prayer to God will result in complete cure of particular diseases in a prescribed, individual case. Healing would seem to be not only the prominent work of the church and its members, but the one distinctive belief around which the church organization is founded and sustained."

For the information of the court will say that every person who becomes a member of any Christian Science Church which is a part of the organized movement headed by The Mother Church, The First Church of Christ, Scientist, in Boston, Massachusetts, must subscribe to the tenets hereinabove referred to and fully set out in appellees' main brief as "Appendix C."

The branch churches of this movement have been established in every city of importance in the United States and in practically every country of the world, and those who depend upon the ministrations of Christian Science for healing may be numbered in the millions. Thus the importance of this question may be readily seen.

By reference to the Christian Science Journal, a monthly periodical established in the year 1883 and published by The Christian Science Publishing Society, one of the activities of The Mother Church above referred to, a list of the Christian Science Churches constituting the churches of this movement may be found, and also a list of the recognized Christian Science practitioners, whose qualifications to practice this method of healing are inquired into before their names are inserted therein.

**Liberal View of Courts and Legislatures in the
Matter of the Regulation of the Healing of
the Sick as Shown by Statutes and Decisions
Affecting the Subject.**

The medical practice acts of twenty-six states and territories of the Union contain exemption clauses in favor of those who heal by prayer or in the course of the practice of a religion, and Ex-President Taft, by a special amendment to his executive order of October 14, 1914, for the Panama Canal Zone, adopted for the purpose, exempted such treatment of the sick in the following language:

“Nothing in this order shall be *construed* to prohibit the practice of the religious tenets of any church in the ministering to the sick or suffering by mental or spiritual means without the use of any drug or material remedy, whether gratuitously or

for compensation, provided sanitary laws are complied with."

For the convenience of the court we have added to our main brief as Appendix "A" the clauses of the medical practice acts of the various states providing for the exemption of those who employ prayer only in their treatment and those who heal in the course of the practice of a religion. Such acts have been held to be constitutional in other states than California, as is more fully set out hereinafter.

As indicative of the liberal view that the courts are taking in construing the medical practice acts of the various states, we cite the very recent case of *State v. Fite*, decided by the Supreme Court of the state of Idaho on October 9, 1916, and reported in *Pacific Reporter Advance Sheet*, Volume 159, No. 9, at page 1183.

This is a case in which a person employed in what is known as the chiropractic system of healing was prosecuted for a violation of the medical practice act of that state, and it was presented to the Supreme Court on appeal from a judgment of conviction.

The record disclosed that appellant, who is a chiropractor, had no license to practice medicine and surgery; that he administered chiropractic treatments to certain persons and

charged and received compensation therefor; that these treatments consisted in the manipulation of the region of the patient's spinal column with the hands of the practitioner, and that no instruments were used nor were any drugs or medicine prescribed or given. The evidence did not tend to show that appellant held himself out to the public as a physician and surgeon or either, or that he investigated or diagnosed or offered to investigate or diagnose any physical or mental ailment of any person with a view to relieving the same, as is commonly done by physicians and surgeons, nor did he suggest, recommend, prescribe or direct for the use of any person, sick, injured or deformed, any drug, medicine, means or appliances for the intended relief, palliation or cure of the same, unless a chiropractic treatment as above described can be construed to be a "means or appliance" in the sense in which these words were employed by the legislature in section 1353 of the Political Code of the state of Idaho, being a part of the medical practice act of that state.

Said section 1353 reads as follows:

"Any person shall be regarded as practicing medicine and surgery, or either, who shall advertise in any manner or hold himself or herself out to the public as a physician and surgeon or either, in this state,

or who shall investigate or diagnosticate or offer to investigate or diagnosticate any physical or mental ailment of any person with a view of relieving same as is commonly done by physicians and surgeons or suggest, recommend, prescribe or direct for the use of any person, sick, injured or deformed, any drug, medicine, means or appliance for the intended relief, palliation or cure of the same, with the intent of receiving therefor either directly or indirectly any fee, gift or compensation whatsoever; provided, however, this chapter shall not apply to dentists and registered pharmacists or midwives in their respective professions, nor to services rendered in cases of emergency where no fee is charged."

The court stated that the sole question before it was the proper interpretation of this section. After citing many cases involving the construction of medical practice acts of other states, the court had the following to say:

"Constitutional provisions and statutory enactments should be read and construed in the light of conditions of affairs and circumstances existing at the time of their adoption. (Citing *Toncray v. Budge*, 14 Idaho 621, 95 Pac. 26.)"

The court then presented a history of the section under consideration at much length, and finally concluded with the following:

"We conclude that the practice of chiropractic is not the practice of medicine and surgery as defined in section 1353. *supra*,

and that appellant was erroneously convicted.

"The judgment of the trial court is reversed with instructions to dismiss the action."

The Acts Do Not Create a Monopoly in Favor of Those Who Heal by Christian Science.

In our main brief under this point we cited religious authorities of different denominations showing how generally the element of the healing of the sick was included in their rituals, creeds or prayers, and in further support of this point we cite additional religious authorities:

"The Catholic Encyclopedia," volume 3, page 589, treating of the subject of "Charismata," in defining this term says:

"* * * denotes any good gift that flows from God's benevolent love unto man; a divine grace or favor, ranging from redemption and life eternal to comfort in communion with brethren in the faith."

Paragraph 10, treating of same subject, provides:

"*Healing* is singled out by St. Paul among the miracles because it was probably the most frequent and most striking."

In volume 5 of the same work, at page 716, treating of the subject "Extreme Unction," it is said:

"Extreme unction is a sacrament of the

New Law instituted by Christ to give spiritual aid and confer a perfect spiritual health, including, if need be, the remission of sins, and also, conditionally to *restore bodily health*, to Christians who are seriously ill; it consists essentially in the unction by a priest of the body of the sick person, accompanied by a suitable form of words."

In the same volume and treating of the same subject under the subdivision entitled "Actual Right of Administration," it is said:

"'Holy Father, Physician of souls and bodies, Who didst send Thy Only-Begotten Son as the healer of every disease and our deliverer from death, heal also Thy servant N. from the bodily infirmity that holds him, and make him live through the grace of Christ, by the intercession of (certain saints that are named) and of all the saints.'"

At page 723 of the same volume, and treating of the same subject, it is said:

"* * * and Jonas, Bishop of Orleans, in his '*Institutio Laicalis*' (about 829) after reprobating the popular practice of recurring in sickness to magical remedies, says: 'It is obligatory on anyone who is sick, to demand, not from wizards and witches, but from the church and her priests, the unction of sanctified oil, a remedy which (as coming) from our Lord Jesus Christ, will benefit him not only in body, but in soul.'"

Constitutional Right of Religious Freedom.

The Federal Constitution guarantees the freedom of the practice of religion in amendment 1 by the following language:

“Congress shall make no law respecting an establishment of religion, or prohibiting the exercise thereof.”

The California Constitution provides as follows regarding the freedom of religious practices:

“The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall be forever guaranteed in this state.”

Art. 1, sec. 4, Cal. Cons.

Chief Justice Willard Bartlett of the Court of Appeals of New York, in a concurring opinion in the case of *People v. Cole*, hereinabove more fully quoted, said:

“I concur in Judge Chase’s construction of the statute. But I would go farther. I deny the power of the legislature to make it a crime to treat disease by prayer.”

As was said by the Supreme Court of Kansas in discussing the effect of a clause in their medical practice act protecting the practice of religious beliefs:

“The express exclusion of religious belief in the application of the law was hardly necessary. Religious freedom is guaranteed by the constitution, and without men-

tion in the statute would have been implied,”

State of Kansas v. Wilcox, 64 Kan. 789,
794.

The principle of religious liberty has induced many legal immunities and has been jealously guarded by the courts.

In the case of Hoeffler v. Clogon, 171 Ill. 462, the court said:

“The doctrine of superstitious uses arising from the statute 1 Edward VI, chap. 14, under which devises for procuring masses were held to be void, is of no force in this state and has never obtained in the United States. In this country there is absolute religious equality, and no discrimination, in law, is made between different religious creeds or forms of worship. It cannot be denied that bequests for the general advancement of the Roman Catholic religion, the support of its forms of worship or the benefit of its clergy, are charitable, equally with those for the support or propagation of any other form of religious belief or worship. The nature of the mass, like preaching, prayer, the communion, and other forms of worship, is well understood. It is intended as a repetition of the sacrifice on the cross, Christ offering Himself again through the hands of the priest and asking pardon for sinners as He did on the cross, and it is the chief and central act of worship in the Roman Catholic Church. It is a public and external form of worship,—a ceremonial which constitutes a visible action. It may

be said for any special purpose, but from a liturgical point of view every mass is practically the same. The Roman Catholic Church believes that christians who leave this world without having sufficiently expiated their sins are obliged to suffer a temporary penalty in the other, and among the special purposes for which masses may be said is the remission of this penalty. A bequest for such special purpose merely adds a particular remembrance to the mass, and does not, in our opinion, change the character of the religious service and render it a mere private benefit. While the testator may have a belief that it will benefit his soul or the souls of others doing penance for their sins, it is also a benefit to all others who may attend or participate in it. An act of public worship would certainly not be deprived of that character because it was also a special memorial of some person, or because special prayers should be included in the services for particular persons. Memorial services are often held in churches, but they are not less public acts of worship because of their memorial character, and in *Duror v. Motteux, supra*, the trust for the preaching of an annual sermon in memory of the testator was held to be a charitable use. The mere fact that the bequest was given with the intention of obtaining some benefit or from some personal motive does not rob it of its character as charitable. The masses said in the Holy Family Church were public, and the presumption would be that the public would be admitted, the same as at any other act of worship of any other christian sect. The bequest is not only for an act of religious worship, but it is an aid

to the support of the clergy. Although the money paid is not regarded as a purchase of the mass, yet it is retained by the clergy, and, of course, aids in the maintenance of the priesthood."

Also see:

Kerrigan v. Tabb, 29 Atl. 701;

Sherman v. Baker, 20 R. I. 613;

Cooley's Constitutional Limitations, 1890
Ed. at pages 575-7.

Statutes of a Legislative Body Presumed to be Valid.

To justify a court in pronouncing a legislative act unconstitutional, the case must be so clear as to be free from doubt, and the conflict of the statute with the constitution must be irreconcilable, because it is but decent respect to the wisdom, the integrity and the patriotism of the legislative body by which any law is passed to presume in favor of its validity until the contrary is shown beyond reasonable doubt.

Sinking-Fund Cases, 99 U. S. 718;

Fairbank v. U. S., 181 U. S. 283.

Conclusion.

In closing we will present in a few words a logical statement of the points presented and the conclusion which we think must be drawn therefrom.

In the first place we contend that the only question which this court is called upon or

indeed can determine is whether or not the trial court properly denied the temporary injunction, and this we believe is amply supported by the authorities presented; therefore, did the court err in rendering its judgment? This we feel sure cannot be concluded from a reading of complainant's bill and an examination of the authorities cited on that point. This, then, we believe ends the matter, and this court should either sustain or reverse the decision of the trial court and remand the case for further proceedings.

Notwithstanding our view of the matter, as above indicated, we felt that wisdom and proper caution dictated a thorough and exhaustive consideration of the main question in dispute in this case, especially in view of the importance of the question involved and the fact that this is the first time such a question has been presented to this court.

We have first shown by ample authorities that the clause in question of the Medical Practice Acts does not discriminate in favor of or against anyone, and we have particularly shown that no monopoly is created in favor of those who heal by means of Christian Science, because the provision expressly states that all persons who treat by prayer or in the course of the practice of religion are exempted, and religious authorities are presented in support of the fact that this element is recognized in prac-

tically every important religious denomination.

We further show that similar exemptions appear in the medical practice acts of twenty-six states and territories of the United States, and also that, where the question has been raised, such acts have been held constitutional and valid. We cite at considerable length the very recent decision of the District Court of Appeals of the state of New York, entitled *State v. Cole*, because of its direct bearing on the question of the legality of treatment by prayer and particularly call the court's attention to that decision.

We next present in brief form a history of the growth of prayer and the dependence of mankind thereon, together with numerous citations from eminent authorities showing the efficacy of prayer in meeting the human needs. In point of time these citations begin with the Bible and end with those from the Christian Science text book, *Science and Health, with Key to the Scriptures*, by Mary Baker Eddy. In further support of the fact that healing by prayer is reasonable and natural, we have presented numerous citations from the Bible in "Appendix A" of our main brief, and if there is still a question in the mind of anyone as to whether or not the prayer of Christian Science heals the sick, ample evidence may be adduced.

We then present authorities to show that courts have recognized the distinction between healing by spiritual means or prayer, and other

means, and also that treatment by prayer or in course of the practice of a religion does not constitute the practice of medicine.

In "Appendix C" of our main brief we have presented the tenets of the Christian Science Church, and in the body of the brief present authorities to the effect that this court can take judicial notice of the existence of the Christian Science religion and the tenets thereof.

Authorities are then presented to show that reasonable medical legislation is salutary, and, that based upon reasonable class differences, certain discriminations are not only justified but demanded, and lastly, the point is presented that the statutes of a legislative body are presumed to be valid and that in the construction of same every doubt is resolved in their favor.

Therefore, we believe that should the court consider the question of the constitutionality of the acts here in question, only one conclusion can follow, and that is that they are constitutional and valid.

Dated November 17, 1916.

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